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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement by the American Association of Jurists, a non-governmental organization in special consultative status, and Centre Europe-Tiers Monde, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[25 July 1997]

1. In accordance with the Sub-Commission's mandate to undertake a study on the question of impunity in violations of economic, social and cultural rights, the American Association of Jurists (AAJ) and the Centre Europe-Tiers Monde (CETIM) organized two seminars. One was held in November 1996 at the United Nations Office in Geneva and the other in April 1997 at the Universidad Carlos III in Madrid. The latter enjoyed the active participation and valuable assistance of two of the university's institutes, Bartolomé de las Casas and Francisco de Vitoria.

2. The seminars were attended by university professors from Argentina, Canada, Chile, Italy and Spain, and, in a personal capacity, by officials of the United Nations Centre for Human Rights, the United Nations Conference on Trade and Development and the International Labour Organization and by a member of the United Nations Committee on Economic, Social and Cultural Rights. The Centre for Human Rights was officially represented by a staff member at the Madrid seminar. The Special Rapporteur for the question, Mr. El-Hadj Guissé, was invited to and participated in both seminars.

3. The seminars had before them a 40-page working paper prepared by the organizers, which was available in Spanish and in French.

4. The seminars adopted a broad approach to the theme, analysing not only punitive aspects but also preventive aspects of violations of economic, social and cultural rights. The debate extended to declarations of principles, draft codes of conduct, the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights prepared by the Committee, and especially the question of sanctions and redress for such violations. At the Madrid seminar in particular, the participation of professors of public international law and criminal law ensured a fruitful interdisciplinary exchange.

5. Reports on both seminars are available in Spanish, with summaries in French.

6. In the light of the discussions and work of the AAJ and the CETIM in recent years, of statements and debates on the occasion of seminars and subsequent reflections, and with a view to taking concrete steps to achieve a real balance between the defence and promotion of civil and political rights and those of economic, social and cultural rights, the AAJ and the CETIM suggest that the Sub-Commission, in conclusion of the question of impunity in the violation of economic, social and cultural rights, adopt the following suggestions and recommendations:

(a) That control and follow-up mechanisms for the implementation of the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, approved by the ILO Governing Body in 1977, should be reactivated in the ILO;

(b) That consultations should be restarted with a view to establishing codes of conduct on the transfer of technology and on multinational enterprises;

(c) That a declaration of principles on human rights and the environment should be promoted (see the draft contained in the final report by Mrs. Ksentini, E/CN.4/Sub.2/1994/9);

(d) That the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices should be applied and eventually improved;

(e) That follow-up mechanisms should be created for the United Nations Declaration against Corruption and Bribery in International Commercial Transactions (General Assembly resolution 51/191) and the International Code of Conduct for Public Officials (General Assembly resolution 51/59), for example, regular publication of the list of private or public enterprises guilty of acts of corruption;

(f) That international judicial cooperation should be promoted (with precedence over banking secrecy, as decided recently by the Federal Court of the Helvetic Confederation (Case 1A.33/1997 of 8 April 1997));

(g) That the establishment of State and investor control over financial activities should be promoted, particularly with regard to the management of pension funds (in the latter case with the participation of the trade unions concerned);

(h) That studies should be continued on appropriate indicators to measure progress achieved with the gradual implementation of economic, social and cultural rights, until such indicators have been established;

(i) That the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights should be approved, subject to relevant amendments;

(j) That the Committee on Economic, Social and Cultural Rights should be encouraged to prepare general comments on each of the rights contained in the Covenant, along the lines of General Comment 4 on the right to adequate housing;

(k) That it should be suggested that the Commission on Human Rights appoint a rapporteur (as proposed by the Committee on Economic, Social and Cultural Rights) or a working group, to deal with violations of economic, social and cultural rights;

(l) That a General Assembly declaration should be sought, stating that large-scale violations of economic, social and cultural rights and the abuse of economic power and international financial mechanisms to obtain disproportionate concessions, advantages or profit to the serious detriment of groups or communities (such as women, children, disabled persons, workers, consumers, populations, minorities or indigenous peoples) constitute international crimes. (See General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (adopted under resolution 40/34), in particular articles 18 and 21 of the Declaration in section B);

(m) That a subsection should be added to article 18 of the Draft Code of Offences against the Peace and Security of Mankind, prepared by the United Nations International Law Commission, along the lines of the declaration proposed for the General Assembly in paragraph (l) above;

(n) That the draft statute for an international criminal court, prepared by the International Law Commission, should make provision for a division specializing in this type of offence;

(o) That the enforcement of national laws and regulations consistent with existing and proposed international norms in this field should be encouraged.